



Frank H. Murkowski, Governor

Department of Community and Economic Development

Division of Community Advocacy

550 W. 7th Avenue, Suite 1770, Anchorage, AK 99501-3510

Telephone: (907) 269-4501 • Fax: (907) 269-4539 • Text Telephone: (907) 465-5437

Email: questions@dcad.state.ak.us • Website: www.dcad.state.ak.us/cbd/

July 20, 2004

Ms. Kristie Smithers, MMC
Wasilla City Clerk
290 E. Herning Ave.
Wasilla, AK 99654

State/Borough/City Relationships Concerning Sales Taxes – general law
city vs. home rule city

Dear Ms. Smithers:

You asked whether the City of Wasilla would have greater autonomy as a home rule city with respect to: (1) setting the terms of its sales tax (e.g., exemptions); and (2) collecting its own sales tax in the event that sales taxes were also levied by the Matanuska-Susitna Borough (Borough) and/or the State of Alaska (State).

Brief Answers

In short, I believe that the answers to your questions are:

- “yes,” regarding autonomy in setting the terms of the City’s sales tax if the Borough also levies a sales tax (although the Borough Assembly could authorize general law cities to levy and collect sales and use taxes on other sources);
- “very unlikely,” regarding autonomy in setting the terms of the City’s sales tax in the event the State also levies a sales tax (of course, a determination on that matter could only be made after the law implementing the State sales tax was enacted; however, since there are 162 municipalities in Alaska, allowing autonomy would create great potential for complexities in applying the sales taxes);
- “no,” regarding collecting the sales tax in the event that the Borough also levies a sales tax; and
- “very unlikely,” regarding whether the City would be permitted to collect its sales tax in the event the State also levies a sales tax (again, a determination would have to await enactment of the law).

While a home rule city may exercise autonomy with respect to the terms of its sales tax, as noted above, a general law city may be authorized by the borough assembly to levy and collect sales and use taxes on sources other than those taxed by the borough.

Notwithstanding the provisions of law, the prospect of significantly divergent sales taxes levied by a borough and a city within that borough is disquieting. For reasons noted below, it is certainly conceivable – perhaps even likely – that the legislature would limit a home rule city’s authority to impose divergent sales taxes if such became an issue before that body.

Detailed Response

A home rule city in a borough that levies a sales tax has autonomy with respect to terms of its sales tax.

If the City of Wasilla remains a general law (first-class) city and the Matanuska-Susitna Borough levies an areawide sales tax, the provisions of AS 29.45.700 would apply (see Appendix A). AS 29.45.700(a) places limits on the power of a general law city to levy a sales tax if that city is within a borough that also levies an areawide sales tax. Specifically, AS 29.45.700(a) states in relevant part (emphasis added):

A city in a borough that levies and collects areawide sales and use taxes may levy sales and use taxes on all sources taxed by the borough in the manner provided for boroughs. . . .

AS 29.45.700(a) is not among the home rule limitations set out in AS 29.10.200 (see Appendix B). As such, a home rule city in a borough that levies a sales tax is not required to limit its sales or use tax to just those “sources taxed by the borough” or to levy the tax “in the manner provided for boroughs.”

However, a general law city in a borough that levies a sales tax may be permitted to levy and collect taxes on sources other than those taxed by the borough.

AS 29.45.700(a) allows a borough assembly to authorize a city to levy and collect sales and use taxes on sources not taxed by the borough. The law provides:

Except as provided in (d) and (e) of this section, the assembly may by ordinance authorize a city to levy and collect sales and use taxes on other sources.

A home rule city in a borough that levies an areawide sales tax does not have autonomy with respect to the collection of its own sales tax.

A borough government is obligated to levy and collect property, sales, and use taxes levied by home-rule and general law cities within the boundaries of the borough. AS 29.35.170 provides as follows (emphasis added by underlining):

Sec. 29.35.170. Assessment and collection of taxes. (a) A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.
(b) Taxes levied by a city shall be collected by a borough and returned in full to the levying city. This subsection applies to home rule and general law municipalities.

The prospect of significantly divergent sales taxes by a borough and a city within that borough is disquieting.

If there were significant differences in items subject to sales taxes levied by a city and a borough within that city, it would likely create substantial burdens on local retailers. There is endless potential for divergent provisions in sales and use taxes. Hypothetical examples include the following:

- tobacco might be taxed by one government, but not the other;
- commercial sales of automobiles might be fully taxed by one government, but partially taxed (e.g., the first \$1,000) by the other;
- purchases by non-residents might be exempt from the tax levied by one government, but not the other;
- purchases by senior citizens might be exempt by one government, but not the other;
- taxes on commercial overnight accommodations might be limited in terms of the length of stay (e.g., seven days) by one government, but not the other.

Similarly, there is potential for significant differences with respect to the manner in which the two governments might levy sales and use taxes. Differences with respect to the sources taxed and the manner of taxation would likely create substantial burdens on retailers.

Inconsistent sales taxes by a borough and a city within that borough do not conform to the principle of “uniformity.”

In 1982, the Alaska Supreme Court struck down a special sales tax (five percent tax on hotel/motel room rental for the first seven days) levied by the City of Homer, a general law (first-class) city, because the tax was on a source other

than that taxed by the Kenai Peninsula Borough. See *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982), attached as Appendix C.

Had the City of Homer been a home-rule city, I expect that the Court would have necessarily reached a different conclusion in a well-briefed case. Yet, without making a distinction between home-rule and general law municipal governments, the Court's analysis stressed the underlying principle of "uniformity" in terms of city and borough relations. The Court stated:

This desire for uniformity can best be understood by a brief historical analysis of the evolution of local government in Alaska and its constitutional framework.^[1] The Alaska Constitution clearly states its philosophy on local government:

"The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions."

Alaska Const. art. X, § 1. In an attempt to simplify local government and prevent the overlapping of governmental functions, the framers of the constitution (and, in particular, the Committee on Local Government) considered establishing a single unit of local government with the abolition of cities altogether.^[2] Although the committee felt that a completely unified local government structure had very definite advantages, it was also considered a concept whose time had not yet come. Section 2 of Article X presents the compromise solution: "All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only." However, these two units of government were not to be disparate and competing, but were intended to cooperate and collaborate.^[3] Along with the joint

¹Footnote 5 in original. See generally R. Cease and J. Saroff, *The Metropolitan Experiment in Alaska, A Study of Borough Government* (1968); and V. Fischer, *Alaska's Constitutional Convention* (1975).

²Footnote 6 in original. See V. Fischer, *Alaska's Constitutional Convention* at 121 (1975).

³Footnote 7 in original. A member of the Committee on Local Government offered the following explanation to the convention delegates:

"Our whole concept has been based, not upon a separation of the two basic units of government, the borough and the city, but as close an integration of

service of city council members on the legislative bodies of both the city and the borough, other provisions were included with the intent of encouraging integration between cities and boroughs.^[4]

In one area in particular, that of property taxation, a delegate expressly recognized a need for uniformity:

"I think you can have better government at less expense by correlating the taxing activities and channeling them through one body with one set of appraisers, one set of collectors, one set of condemners and tax sale experts, and having that money go into one fund for distribution by a general body elected by all of the people no matter what level of government we operate at."

4 Proceedings of the Alaska Constitutional Convention 2703 (January, 1956). The legislature responded to that lack of uniformity in the Borough Act of 1961, which provided for an areawide assessment and collection of real and personal property taxes by the borough. See former *AS 07.15.310* and *.320*.

However, conflicts continued to exist between boroughs and cities in the assessment and collection of sales taxes. The desire for uniformity expressed in the committee report on the 1972 revision of the sales tax provisions is consistent with the earlier legislation integrating borough and city property tax functions. Thus, in the

functions between the two as is possible. It was felt, for instance, that we should not, definitely not follow the pattern that you find in most stateside counties where you have the exactly same functions being carried out separately at these two levels of government with their own hierarchy of officialdom and separate capital investment. It was our thought that wherever functions overlap that they should be integrated, and from that standpoint it was the Committee's feeling that if we can get the coordination between the city council and the borough assembly we would be able to achieve the maximum amount of cooperation because then each would best know what the other had to offer, they would realize what the problems of the other were, and you would force them, almost, into the cooperation that we hope to achieve in our local government."

4 Proceedings of the Alaska Constitutional Convention 2625 (January, 1956).

⁴Footnote 8 in original. See, e.g., Article X, § 13, which provides for agreements for cooperative or joint administration of any functions or powers among local governments, and for the voluntary transfer of functions from a city to a borough.

interest of uniformity the superior court correctly construed the contrasting language of AS 29.53.415(a) and AS 29.53.440 as meaning that if the city levies a sales tax, it must tax all of the sources already taxed by the borough.

. . .

We believe that construing the statute to require uniformity in taxation of sources by borough and city units does not offend the rule of liberal construction, and reconciles the goals of maximum local government and minimum overlapping of local government units articulated in Article X, section 1.

Given the underlying principles of uniformity with respect to city and borough relations, it is certainly conceivable that if there were to be a proliferation of divergent sales taxes between borough governments and city governments within those boroughs, the legislature may make AS 29.45.700(a) a limitation on home rule powers.

If the State levied a sales tax, the effect on the autonomy of cities and boroughs to levy sales taxes would depend on the law imposing that tax.

The power of a city or borough government in Alaska to levy taxes is derived from the State government. Article X, Section 2 of Alaska's Constitution provides as follows:

Article X, Section 2. Local Government Powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

If the State levied a sales tax, the effect of such on local sales taxes would, of course, depend on the specific terms of the legislation. The Twenty Third Alaska Legislature (2003 – 2004) considered three proposals for the levy of a general State sales tax.⁵

While none of the three proposals legislative proposals for a general State sales tax passed, each would have required that municipal sales taxes conform to State sales taxes. That is not surprising since there are 162 municipalities in Alaska. If each municipality had autonomy regarding the levy of sales taxes, the

⁵Those were House Bill Number 293, Senate Bill Number 220, and Senate Bill Number 366. The Legislature also considered a number of special sales taxes (e.g., tobacco and tourism).

confusion and complexities noted earlier with regard to the prospect of divergent city and borough sales taxes would be greatly magnified when considered in the context of the state as a whole.

The following excerpts from each of the three bills indicates the consistent nature of the perception among legislators involved in shaping those bill with respect to the need for uniformity with regard to municipal sales taxes and prospective State sales tax:

Section 7 of CS FOR HOUSE BILL NO. 293(FIN) provided as follows (emphasis added):

. . . a municipality that levies a general sales and use tax may collect the municipality's general sales and use tax through December 31, 2007. The state shall assume responsibility for administering a municipal general sales and use tax on January 1, 2008, unless requested to do so earlier by a municipality that has conformed its tax base, including exemptions, definitions, and sourcing rules, to AS 43.44.

Section 7 of SB 220 provided as follows (emphasis added):

A tax authorized under this section shall be administered and collected by the state under AS 43.44. The exemptions to a tax authorized under this section shall be identical to those provided in AS 43.44.

Sections 15 and 23 of CS FOR SENATE BILL NO. 366(FIN)(fld S) stated (emphasis added):

Sec. 15. AS 29.45.650 is repealed and reenacted to read:

Sec. 29.45.650. General sales and use tax. (a) Except as provided in AS 29.45.750, a borough may levy a general sales and use tax. If a borough levies a general sales and use tax,

(1) the borough must conform exactly to the statewide sales and use tax levied and collected under AS 43.44, except that the municipal general sales and use tax may be levied at any rate; and

(2) the borough's use tax is levied on the privilege of using in the borough tangible personal property or services.

(b) The Department of Revenue shall collect a sales and use tax levied under this section and remit the proceeds to the municipality.
The Department of Revenue may use its administrative authority

Ms. Kristie Smithers, MMC
July 19, 2004
Page 8

under AS 43.05 and its enforcement and collection authority under AS 43.10 to collect a sales and use tax levied under this section.

Sec. 23. AS 29.45.700 is repealed and reenacted to read:

Sec. 29.45.700. Power of levy. A city may levy sales and use taxes in the manner provided for boroughs under AS 29.45.650 and 29.45.655.

If you have questions or desire additional information concerning this matter, please let me know. I look forward to the discussion with the Mayor and City Council on July 26, 2004.

Cordially,

A handwritten signature in black ink, appearing to read "Dan Bockhorst", written in a cursive style.

Dan Bockhorst
Local Government Specialist

Enclosures:

Appendix A – AS 29.45.700 (Power To Levy Sales And Use Taxes)

Appendix B – AS 29.10.200 (Limitations On Home-Rule Powers)

Appendix C – *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982)

APPENDIX A

SECTION 29.45.700 OF THE ALASKA STATUTES (POWER TO LEVY SALES AND USE TAXES)

Sec. 29.45.700. Power of levy. (a) A city in a borough that levies and collects areawide sales and use taxes may levy sales and use taxes on all sources taxed by the borough in the manner provided for boroughs. Except as provided in (d) and (e) of this section, the assembly may by ordinance authorize a city to levy and collect sales and use taxes on other sources.

(b) A city in a borough that does not levy and collect sales and use taxes for areawide borough functions may levy and collect sales and use taxes in the manner provided for boroughs.

(c) A city outside a borough may levy and collect sales and use taxes in the manner provided for boroughs.

(d) A city that levies and collects sales and use taxes under (a) of this section may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other types of allotments issued under 7 U.S.C. 2011 - 2036 (Food Stamp Program); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). For purposes of this subsection, the value of a food stamp allotment paid in the form of a wage subsidy as authorized under AS 47.25.975 (b) is not considered to be an allotment issued under 7 U.S.C. 2011 - 2036 (Food Stamp Program). This subsection applies to home rule and general law municipalities.

(e) A city that levies and collects sales and use taxes may not levy and collect a sales or use tax on (1) the physical transfer of refined fuel, unless the transfer is made in connection with a sale or use in the city, or (2) wholesale sales or transfers of fuel refined in the city. A sale is in the city if the fuel is delivered to the buyer in the city. A use is in the city if the fuel is consumed in the city. This subsection applies to home rule and general law municipalities.

(f) The prohibitions on the levy and collection of a sales or use tax on refined fuel in (e) of this section do not apply to a city if, on the effective date of (e) of this section, the city is

(1) levying and collecting a sales or use tax on the sale, use, or transfer of refined fuel under an ordinance adopted before January 1, 2003; or

(2) receiving payments in lieu of a sales or use tax on the sale, use, or transfer of refined fuel under an agreement entered into before January 1, 2003.

APPENDIX B

SECTION 29.10.200 OF THE ALASKA STATUTES (LIMITATIONS ON HOME-RULE POWERS)

Sec. 29.10.200. Limitation of home rule powers. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

- (1) AS 29.05.140 (transition);
- (2) AS 29.06.010 (change of municipal name);
- (3) AS 29.06.040 - 29.06.060 (annexation and detachment);
- (4) AS 29.06.090 - 29.06.170 (merger and consolidation);
- (5) AS 29.06.190 - 29.06.420 (unification of municipalities);
- (6) AS 29.06.450 - 29.06.530 (dissolution);
- (7) AS 29.10.100 (charter amendment);
- (8) AS 29.20.010 (conflict of interest);
- (9) AS 29.20.020 (meetings public);
- (10) AS 29.20.050 (legislative power);
- (11) AS 29.20.060 - 29.20.120 (assembly composition and apportionment);
- (12) AS 29.20.140 (qualifications of members of governing bodies);
- (13) AS 29.20.150 (term of office);
- (14) AS 29.20.220 (executive power);
- (15) AS 29.20.270 (e) (ordinance veto by mayor);
- (16) AS 29.20.630 (prohibited discrimination);
- (17) AS 29.20.640 (reports);
- (18) AS 29.25.010 (a)(10) (municipal exemption on contractor bond requirements);
- (19) AS 29.25.050 (codification);
- (20) AS 29.25.060 (resolutions);
- (21) AS 29.25.070 (e) (notices of certain civil actions);
- (22) AS 29.25.074 (surcharge);
- (23) AS 29.25.080 (breast-feeding);
- (24) AS 29.26.030 (notice of elections);
- (25) AS 29.26.050 (voter qualification);
- (26) AS 29.26.250 - 29.26.360 (recall);
- (27) AS 29.35.020 (extraterritorial jurisdiction);
- (28) AS 29.35.030 (eminent domain);
- (29) AS 29.35.050 (garbage and solid waste services);
- (30) AS 29.35.055 (local air quality control program);
- (31) AS 29.35.060 (franchises and permits);
- (32) AS 29.35.070 (public utilities);
- (33) AS 29.35.080 (alcoholic beverages);
- (34) AS 29.35.090 (b) (certain vacations of rights-of-way prohibited);
- (35) AS 29.35.120 (post audit);
- (36) AS 29.35.125 (fees for police protection services);

APPENDIX B
SECTION 29.10.200 OF THE ALASKA STATUTES
(LIMITATIONS ON HOME-RULE POWERS)
Page Two

- (37) AS 29.35.131 (enhanced 911 system);
- (38) AS 29.35.141 (regulation of radio antennas);
- (39) AS 29.35.145 (regulation of firearms);
- (40) AS 29.35.160 (education);
- (41) AS 29.35.170 (b) (assessment and collection of taxes);
- (42) AS 29.35.180 (b) (land use regulation);
- (43) AS 29.35.250 (cities inside boroughs);
- (44) AS 29.35.260 (cities outside boroughs);
- (45) AS 29.35.340 (acquisition of areawide power);
- (46) AS 29.35.450 (voter approval of alteration or abolishment of service areas);
- (47) AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
- (48) AS 29.40.160 (a) - (c) (title to vacated areas);
- (49) AS 29.40.200 (subdivisions of state land);
- (50) AS 29.45.010 - 29.45.570 (property taxes);
- (51) AS 29.45.650 (c), (d), (e), (f), (i), and (j) (sales and use tax);
- (52) AS 29.45.700 (d) and (e) (sales and use tax);
- (53) AS 29.45.750 (taxation of mobile telecommunications);
- (54) AS 29.45.810 (exemption from municipal taxation);
- (55) AS 29.46.010 (b) (exemption from municipal assessment);
- (56) AS 29.47.200 (b) (security for bonds);
- (57) AS 29.47.260 (construction);
- (58) AS 29.47.470 (air carriers);
- (59) AS 29.60.050 (a) (limitation on computation and use of payment);
- (60) AS 29.60.120 (a) and (c) (priority revenue sharing for health facilities and hospitals);
- (61) AS 29.65 (general grant land);
- (62) AS 29.71.040 (procurement preference for state agricultural and fisheries products);
- (63) AS 29.71.050 (procurement preference for recycled Alaska products).